

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:	<u>JOINT RULE 26(f) REPORT</u>
FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	
Plaintiff,	:	
v.	:	11 Civ. 5201 (DLC)
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UBS AMERICAS, INC., et al.,	:	
	:	
Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 6188 (DLC)
Plaintiff,	:	
v.	:	
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JPMORGAN CHASE & CO., et al.,	:	
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Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 6189 (DLC)
Plaintiff,	:	
v.	:	
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HSBC NORTH AMERICA HOLDINGS, INC., et	:	
al.,	:	
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Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc.,	:	
	:	11 Civ. 6190 (DLC)
Plaintiff,	:	
v.	:	
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BARCLAYS BANK PLC, et al.,	:	
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Defendants.	:	
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 6192 (DLC)
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v. :
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DEUTSCHE BANK AG, et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 6193 (DLC)
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v. :
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FIRST HORIZON NATIONAL CORP., et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 6195 (DLC)
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v. :
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BANK OF AMERICA CORP., et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 6196 (DLC)
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v. :
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CITIGROUP INC., et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 6198 (DLC)
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v. :
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GOLDMAN, SACHS & CO., et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 6200 (DLC)
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v. :
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CREDIT SUISSE HOLDINGS (USA), INC., et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 6201 (DLC)
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v. :
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NOMURA HOLDING AMERICA, INC., et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 6202 (DLC)
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v. :
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MERRILL LYNCH & CO., INC., et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 6203 (DLC)
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v. :
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SG AMERICAS, INC., et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 6739 (DLC)
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v. :
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MORGAN STANLEY, et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 7010 (DLC)
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v. :
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ALLY FINANCIAL INC., et al., :
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Defendants. :
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FEDERAL HOUSING FINANCE AGENCY, etc., :
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Plaintiff, : 11 Civ. 7048 (DLC)
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v. :
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GENERAL ELECTRIC COMPANY, et al., :
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Defendants. :
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JOINT RULE 26(f) REPORT

Pursuant to Federal Rule of Civil Procedure Rule 26(f), this Court's Order of May 15, 2012 (the "May 15 Order") entered in to the above-captioned actions (the "Actions"), and the Parties' Joint Report Regarding Certain Case Management Issues, *FHFA v. UBS Americas, Inc., et al.*, No. 11 Civ. 5201 (S.D.N.Y. Jan. 11, 2012) (Dkt. No. 46) (the "Joint Report"), the Federal Housing Finance Agency ("Plaintiff" or "FHFA"), as Conservator for Fannie Mae and Freddie Mac, and each of the Defendants in the above-captioned Actions, by and through its respective counsel, respectfully submit this joint report pursuant to Federal Rule of Civil Procedure 26(f).

This Joint Rule 26(f) Report memorializes the agreements that Plaintiff and Defendants (collectively, the "Parties") were able to reach. Also being submitted today are the Parties' separate submissions on sampling. Plaintiff and Defendants are also submitting separate Rule 26(f) Reports addressing each of the areas of dispute identified below.

I. Meeting of Counsel

The Parties held conferences by telephone on May 18, 2012, May 31, 2012, June 1, 2012, June 5, 2012, and June 6, 2012. The participants included:

- On behalf of counsel to Plaintiff, Richard Schirtzer, Christine Chung, Manisha Sheth, Jordan Goldstein, Julia Beskin, Alex Ng, and Claire Catalano of Quinn Emanuel Urquhart & Sullivan, LLP, and Christopher Johnson, Kanchana Leung and Michael Hanin of Kasowitz, Benson, Torres & Friedman LLP.
- On behalf of UBS, Jay Kasner, Scott Musoff, Robert Fumerton and Joseph Sacca of Skadden, Arps, Slate, Meagher & Flom LLP; on behalf of JPMorgan, Penny Shane, Sharon Nelles and Jonathan Sedlak of Sullivan & Cromwell LLP; on behalf of HSBC, Michael Ware and John Conlon of Mayer Brown LLP; on behalf of Barclays, Jeffrey Scott of Sullivan & Cromwell LLP; on behalf of Deutsche Bank and RBS Securities, Thomas Rice, David Woll and Alan Turner of Simpson Thacher & Bartlett LLP; on behalf of First Horizon and Nomura, Bruce Clark and Amanda Davidoff of Sullivan & Cromwell, LLP; on behalf of Bank of America, David Blatt, Edward Bennett, and Beth Stewart of Williams & Connolly LLP; on behalf of the Bank of America individual defendants, Daniel Zinman and Neil Binder of Richards Kibbe & Orbe LLP; on behalf of Citigroup, Brad Karp and Susanna Buerger of Paul, Weiss, Rifkind, Wharton & Garrison LLP; on behalf of Goldman Sachs, Theodore Edelman and Jordan Razza of Sullivan & Cromwell, LLP; on behalf of Credit Suisse, Richard Clary and Michael Reynolds of Cravath, Swaine & Moore LLP; on behalf of Merrill Lynch, David Blatt, Edward Bennett, and Beth Stewart of Williams & Connolly LLP; on behalf of the Merrill Lynch individual defendants, Daniel Zinman and Neil Binder of Richards Kibbe & Orbe LLP; on behalf of SG Americas, Inc., Skadden, Arps, Slate, Meagher & Flom LLP; on behalf of Morgan Stanley, Davis Polk & Wardwell LLP; on behalf of Ally Financial Inc., Reginald Goeke, Michael Ware and Catherine Bernard of Mayer Brown LLP, on behalf of Ally Securities, Jennifer Battle and David Beck of Carpenter Lipps & Leland LLP; on behalf of General Electric, Greg Danilow, Vernon Broderick, Seth Goodchild and Michael Firestone of Weil, Gotshal & Manges LLP.

II. Possibility of Settlement

The Parties discussed the possibility of promptly settling or resolving the Actions. Plaintiff's position is that it is willing to engage in discussions regarding settlement with any Defendant at any time. Defendants are willing to discuss settlement, but believe those discussions would be more productive after substantial discovery has occurred.

III. Case Management Plan

- A. Amendment of Pleadings in 15 Actions: On May 25, 2012, the Court approved Plaintiff's proposed Schedule for Amending its Pleadings, pursuant to which Plaintiff shall amend its complaints in six of the Actions containing fraud allegations by June 13, 2012,¹ and in nine of the Actions that do not contain fraud allegations by June 28, 2012.² (The complaint in *FHFA v. UBS* has already been amended.) Subject to the May 15 Order that discovery shall proceed in each Action, the Parties have agreed that Defendants shall respond to the amended complaints within 45 days of service of the amended complaints; Plaintiff shall serve and file any oppositions to the motions to dismiss within 60 days after the service and filing of any motions to dismiss, and Defendants shall serve and file any replies in further support of their motions to dismiss within 30 days after the service and filing of any opposition papers.
- B. Answer: Pursuant to the May 15 Order, Defendants in the *UBS* Action shall serve and file their Answer by June 22, 2012.
- C. Protective Order: On May 30, 2012, the Court entered the protective order to govern discovery in the above-captioned Actions.
- D. Service: The Parties have agreed to accept service of all documents in the Actions by electronic mail, and expect to enter into a stipulation memorializing this agreement. In addition, the Parties agreed to meet and confer regarding the possibility of creating an electronic repository for the purpose of serving pleadings and correspondence in the Actions. Plaintiff requested additional

¹ The six fraud complaints that FHFA will amend by June 13, 2012 are: *FHFA v. JPMorgan Chase & Co., et al.*, 11 Civ. 6188 (DLC); *FHFA v. Deutsche Bank AG, et al.*, 11 Civ. 6192 (DLC); *FHFA v. Goldman, Sachs & Co., et al.*, 11 Civ. 6198 (DLC); *FHFA v. Merrill Lynch & Co., Inc., et al.*, 11 Civ. 6202 (DLC); *FHFA v. Morgan Stanley, et al.*, 11 Civ. 6739 (DLC); *FHFA v. Ally Financial Inc. et al.*, 11 Civ. 7010 (DLC).

² The nine non-fraud complaints that FHFA will amend by June 28, 2012 are: *FHFA v. HSBC North America Holdings, Inc., et al.*, 11 Civ. 6189 (DLC); *FHFA v. Barclays Bank PLC, et al.*, 11 Civ. 6190 (DLC); *FHFA v. First Horizon National Corp., et al.*, 11 Civ. 6193 (DLC); *FHFA v. Bank of America Corp., et al.*, 11 Civ. 6195 (DLC); *FHFA v. Citigroup Inc., et al.*, 11 Civ. 6196 (DLC); *FHFA v. Credit Suisse Holdings (USA), Inc., et al.*, 11 Civ. 6200 (DLC); *FHFA v. Nomura Holding America, Inc., et al.*, 11 Civ. 6201 (DLC); *FHFA v. SG Americas, Inc., et al.*, 11 Civ. 6203 (DLC); *FHFA v. General Electric Company, et al.*, 11 Civ. 7048 (DLC).

details from Defendants regarding the repository, such as specific services and costs.

- E. Rule 26(a) Initial Disclosures: The Parties exchanged initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) on June 4, 2012.
- F. Electronic discovery: The Court entered the Parties' Stipulation Regarding Electronic Discovery on February 6, 2012. The Parties have been negotiating a separate stipulation governing the production format for loan files. The Parties will endeavor to make submissions to the Court on their respective proposals, if any, by noon on June 11, 2012.
- G. Waiver of privilege or work-product protection: The Parties will abide by the "Claw-Back of Privileged Material" provisions set forth in Section 12 of the Protective Order, entered by the Court on May 30, 2012.
- H. Sampling:
 - 1. In accordance with the Court's Order dated May 8, 2012 and the May 15 Order, certain Defendants began producing loan tapes to Plaintiff on May 18, 2012. In addition, certain Defendants issued third-party subpoenas for such information. All Defendants anticipate that they will substantially complete production of loan tapes, originator information and data dictionaries in their custody and control, if any, by June 8, 2012. The Parties have been exchanging correspondence regarding alleged deficiencies in Defendants' production of loan tapes, originator information, and data dictionaries.
 - 2. During the May 18 telephonic meet-and-confer, Plaintiff disclosed to Defendants that Plaintiff has retained Charles D. Cowan, Ph.D. as its consulting expert regarding sampling. On June 1, 2012, Defendants disclosed to Plaintiff that Defendants have retained Dr. Arnold Barnett and Dr. Christopher James as consulting experts regarding sampling. Because each of the disclosed experts has been retained by either Plaintiff or Defendants, the Parties do not believe that any of the disclosed individuals should be named as a joint sampling expert.
 - 3. On June 1, 2012, Defendants provided Plaintiff with a document titled "Proposed topics for meet and confer re: sampling protocol." Because the Parties disagree about fundamental issues regarding sampling, the Parties will be making separate submissions on this topic.
- I. Trial Tranches:
 - 1. May 15 Order's Proposal: Each of the 16 Actions will be separately tried, and will proceed in four tranches. The first tranche will include only *UBS*. The remaining 15 cases will be divided among three remaining trial tranches. The Pretrial Order in *UBS* will be due August 2, 2013, and the Court has scheduled the trial of *UBS* to take place in the Fall of 2013. *See*

May 15 Order. The Pretrial Orders for the cases in each of the three remaining tranches, respectively, will be filed December 6, 2013, May 2, 2014, and August 1, 2014. *Id.*

2. At the May 14 conference, the Court invited the Parties to confer about and suggest assignments of particular Actions to particular tranches. May 14 Transcript at 28:9-11. Plaintiff provided a proposal to Defendants on May 23, 2012. On June 1, 2012, Defendants provided Plaintiff with alternative proposals regarding tranches.
3. The Parties disagree as to which Actions should be included in each trial tranche, and some Defendants believe that trial tranches should not be set at this time. Accordingly, the Parties will address trial tranches in their separate Rule 26(f) reports.

J. Document Requests:

1. May 15 Order's Proposal: The Court's May 15 Order proposes that the Parties will substantially complete document discovery in all Actions by September 30, 2012. Plaintiff understands that in the May 15 Order the Court set a September 30, 2012 deadline for substantial completion of document discovery, which Plaintiff believes includes document discovery from third parties. Defendants understood that the Court proposed the September 30, 2012 date for substantial completion of the Parties' document exchanges, and Defendants submit that it would be impossible for all document discovery to be completed by September 30, 2012, especially if the deadline applies to document discovery from third parties. The Parties will provide separate submissions on this topic.
2. Phasing and Prioritization of Discovery: Plaintiff believes that in light of the expedited schedule for the completion of document discovery, phased document discovery, which the Parties had previously discussed, is not practicable. Defendants have suggested that the Parties should be free to request prioritization of the production of certain categories of documents, and Plaintiffs agree.
3. Document Requests Served:
 - (a) Plaintiff served its first request for production of documents pursuant to Fed. R. Civ. P. 34 on the *UBS* Defendants on May 16, 2012, and on all other Defendants on May 18, 2012. Defendants served their first request for production of documents on May 22, 2012.
 - (b) Plaintiff served its second request for production of documents on June 4, 2012. Defendants intend to serve a second request for production of documents promptly.

- (c) The Parties agree that responses and objections to all document requests shall be served in accordance with the Federal Rules of Civil Procedure.

4. Document Requests Going Forward:

- (a) The Parties agree that document requests are to be served no later than 30 days prior to the document discovery deadline determined by the Court, subject to the ability of the Parties to promptly serve appropriately tailored document requests thereafter based on facts learned during the course of discovery, or by agreement or leave of Court.
- (b) The Parties agree that they will serve case-specific document requests according to the needs of each individual case.
- (c) The Defendants represented that they will coordinate their document requests and seek to avoid serving Plaintiff with redundant requests.

K. Search Term and Custodian Lists: The Parties agreed to exchange initial search terms and custodian lists by June 8, 2012. *See* Joint Report dated January 11, 2012.

L. Interrogatories:

- 1. Interrogatories Already Served: Defendants served interrogatories pursuant to Local Rule 33.3(a) on May 17, 2012. Plaintiff served interrogatories pursuant to Local Rule 33.3(a) on May 18, 2012. All Parties, except the Ally Defendants, served their responses and objections to the respective interrogatories on May 31, 2012.³ The Parties dispute the sufficiency of each other's interrogatory responses and are meeting and conferring to attempt to resolve their disputes.

³ Ally Financial Inc. ("AFI"), GMAC Mortgage Group LLC ("GMACM Group"), and Ally Securities have advised Plaintiff that they would not be able to meet the accelerated schedule for interrogatory responses due to the recent bankruptcy filing by the ResCap Defendants, which are subject to the automatic stay protections of the Bankruptcy Code and which AFI, GMACM Group, and Ally Securities assert have custody and control over the majority of accessible documents relating to the securitizations. Plaintiff reserves the right to contest that assertion. AFI, GMACM Group, and Ally Securities have advised that they will respond to the interrogatories in the time period permitted under the Federal Rules. The ResCap Defendants, as debtors, have filed a motion with the Bankruptcy Court to extend the protection of the automatic stay to their non-debtor affiliates, including AFI and Ally Securities, which is scheduled to be heard on July 10 and may further impact the proceedings with respect to these and other parties. Plaintiff has advised that it intends to oppose that motion.

2. Number of Interrogatories: The Parties agree that their Local Civil Rule 33.3(a) interrogatories should not count against the numerical limitations on interrogatories that the Parties agree to or that the Court orders. The Parties have conferred about limitations on the number of additional interrogatories, but were unable to reach an agreement. The Parties' separate Rule 26(f) reports will address this issue.
3. Timing of Interrogatories: The Parties agree that interrogatories are to be served no later than 60 days prior to the close of fact discovery, with responses due 30 days thereafter, subject to the right of the Parties to seek relief from the Court if the 30-day response period is unduly burdensome in light of the requests propounded.

M. Deposition Discovery:

1. The May 15 Order proposed that depositions may commence in all Actions on January 2, 2013. Each deponent will be deposed only once across the Actions, absent leave of the Court. The Court proposed that Defendants, as a group, may take up to 20 depositions in total of FHFA and the GSEs, while FHFA may take up to 20 depositions of each corporate family of Defendants.
2. Deposition of Trial Witnesses: At the May 14, 2012 conference, the Court proposed that "if any party calls as a witness for trial someone who was not deposed, that the adversary or other parties in the case would have an opportunity to depose that person before trial. *See* May 14 Tr. at 28:24-25 – 29:1-3. The Parties disagree regarding this issue and their separate Rule 26(f) reports will address it.
3. Joint proposal:
 - (a) The Parties agree that they will negotiate a stipulation governing the conduct of depositions in the Actions.
 - (b) The Parties also agree that each deponent will be deposed only once across the cases, except for good cause shown.
 - (c) The Parties agree that some 30(b)(6) depositions limited to the identity of witnesses with knowledge of information relevant to the subject matter of the Actions and the existence, custodian, location and general description of relevant documents and other physical evidence, or information of a similar nature; relevant electronic systems used in the ordinary course of each party's business; and other topics to be reasonably agreed by the Parties or ordered by the Court, may occur prior to the completion of document discovery.
4. Number and Timing of Party Depositions: The Parties have conferred about limitations on the number of party depositions, and the time required

to conduct those depositions, but were unable to reach an agreement. The Parties' separate Rule 26(f) reports will include their respective proposals on this issue.

5. Number and Timing of Third-Party Depositions: At the May 14, 2012 conference, the Court proposed presumptive limitations on third-party depositions across all Actions, such as two depositions of each originator, one of each servicer, three of each due diligence firm, and one from each credit rating agency, in addition to depositions taken pursuant to Fed. R. Civ. P. 30(b)(6). The Parties agree that if the deposition limits proposed by the Court apply, they apply to each of the Actions independently, as opposed to across all Actions. The Parties disagree as to the number and timing of third-party depositions, and will address this issue in their separate Rule 26(f) reports.
 6. Length of Depositions: Plaintiff proposes to increase the default rule for deposition length from the single seven-hour day permitted under Fed. R. Civ. P. 30(d) to two seven-hour days for fact witnesses, with the exception of Individual Defendants, whose depositions will presumptively last for one seven-hour day. Defendants propose that any fact witness with knowledge of Action-specific information concerning three or more cases or 20 or more securitizations not be limited to two seven-hour days. The Parties have agreed to meet and confer to revise any presumptive limitation on the length of depositions if the circumstances of any particular witness warrant it.
- N. Expert Discovery: The Parties' separate Rule 26(f) reports will set forth their competing proposals on this issue.
- O. Summary Judgment Motions:
1. May 15 Order: The Court proposed that "[a]ny summary judgment motion in [the UBS action] will be fully submitted by May 17, 2013." Plaintiff agrees with the May 17, 2013 deadline; Defendants disagree. The Parties' separate Rule 26(f) reports will set forth their competing proposals on this issue.
 2. Jointly Proposed Briefing Schedule for Plaintiff's Proposed Tranches 2, 3 and 4: In the event that the Court adopts Plaintiff's proposal on Tranches 2, 3 and 4, the Parties propose that any motion for summary judgment should be due by October 15, 2013 in Tranche 2 Actions; by February 10, 2014 in Tranche 3 Actions; and by May 6, 2014 in Tranche 4 Actions.⁴

⁴ In the event that the Court adopts Plaintiff's proposal regarding tranching, the UBS Defendants respectfully submit that the dates for Tranche 2 should apply to the UBS Action as well.

* * *

As officers of the Court, undersigned counsel agree to cooperate with each other and the Court to promote the just, speedy and inexpensive determination of the Actions.

Dated: June 6, 2012
New York, New York

Respectfully submitted,

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